Supreme Court, U. S.
FILED
AUG15 1980
MICHAEL RODAK, JR., CLERK

No. 80-247

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1980

TAMA MEAT PACKING CORP.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For The District of Columbia Circuit

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QUESTION PRESENTED

Is the analysis correct by Drs. Hammer and Chafe, two experts in Linguistics and Semantics retained by the Employer, of the Union's pre-election offer to waive initiation fees, that such offer contained a conditional utterance, so as to make the offer violative of the holding in *NLRB* v. *Savair Mfg. Co.*, 414 U.S. 270 (1973)?

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TAMA MEAT PACKING CORP.,
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vs.

NATIONAL LABOR RELATIONS BOARD,
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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For The District of Columbia Circuit

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The Petitioner, Tama Meat Packing Corp., respectfully prays that a writ of certiorari issue to review the order of the United Court of Appeals for the District of Columbia Circuit rendered June 9, 1980.

OPINION BELOW

The Court of Appeals rendered its Order without opinion, affirming and enforcing an Order of the National Labor Relations Board. The Order of the National Labor Relations Board was issued on May 14, 1979, and is reported at 242 NLRB No. 43. This Order affirmed the opinion of the Administrative Law Judge and appears in the Appendix submitted as part of this Petition.

JURISDICTION

On June 9, 1980 the Court of Appeals for the District of Columbia Circuit issued an Order denying Petitioner's Petition for Review and granting enforcement of an Order of the National Labor Relations Board dated May 14, 1979. Jurisdiction in the Court of Appeals was based on Section 10(f) of the National Labor Relations Act, as amended, 29 U.S.C. §160(f). On July 16, 1980 the Court of Appeals for the District of Columbia Circuit granted Petitioner's Motion for Stay of Mandate and directed the Clerk of Court not to issue mandate for a period of thirty (30) days from July 16, 1980. This Petition for Certiorari is filed within ninety (90) days of entry of the Judgment by the Court of Appeals for the District of Columbia Circuit. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

United States Code, Title 29:

§158(a)(5)

> It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. . .

STATEMENT OF THE CASE

I. Nature of the Case and Proceedings Below[1]

On October 1, 1975, the Union filed an election petition in Board Case No. 18-RC-10677 seeking to represent all production and maintenance employees at the Company's Tama, Iowa facility, with certain specific inclusions and exclusions.[2] Pursuant to Stipulation for Certification Upon Consent Election approved by the Board's Acting Regional Director on October 24, 1975, a representation election was conducted by the Board on December 5, 1975. At the conclusion of that election, the tally of ballots showed that of the 157 valid ballots cast, 69 were for the Union, 85 were against the Union and three were challenged. Thereafter, the Union filed objections to conduct affecting the results of the election and eight of those objections were later made the subject of an unfair labor practice charge in Case No. 18-CA-4809, in which a complaint was issued on February 20, 1976. Subsequently, Case No. 18-CA-4809 and the Union's objections in Case No. 18-RC-10677 were consolidated for hearing. The entire matter was heard before Board ALJ Josephine Klein on May 3, 4, and 5, 1976.

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[1] For convenience, the Administrative Law Judge is hereinafter referred to as the "ALJ"; Petitioner is hereinafter referred to as the "Company"; Respondent National Labor Relations Board is hereinafter referred to as the "Board"; and the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46 (Charging Party in the proceedings before the Board) is hereinafter referred to as the "Union". References to the "Act" are to the National Labor Relations Act, as amended, 29 U.S.C. §141, *et seq.*

[2] The unit involved included all production and maintenance employees employed by the employer at its Tama, Iowa facility including plant clerical employees, meat graders, yard drivers and shag drivers. Excluded from the unit were cattle buyers, salesmen, office clerical employees, professionals, guards and supervisors as defined in the Act.

On August 10, 1976, the ALJ issued her decision in Case Nos. 18-CA-4809 and 18-RC-10677, in which she recommended to the Board *inter alia* that the Union's objections to the December 5 election be sustained and that the election results be set aside and a new election be conducted. Subsequently, the Board issued an Order and Direction of Second Election sustaining the Union's objections and ordering that the election results be set aside and another election held.

A second representation election was conducted in Case No. 18-RC-10677 on July 21, 1978. Of 178 valid ballots cast, 94 were for the Union, 59 were against the Union, and 25 were challenged. Thus, the challenged ballots were not sufficient in number to affect the results of the second election.

On July 27, 1978, the Company filed timely objections to conduct affecting the results of the second election.

By letter dated August 3, 1978, a supplemental statement in support of the Company's objections was filed with the Board at the request of Company Counsel by Dr. Katherine Hammer, Assistant Professor, Department of English, Washington State University, with her biographical sketch and professional references attached thereto. Thereafter, by letter dated August 14, 1978, a second supplemental statement was filed with the Board, again at the request of Company Counsel, by Dr. Wallace L. Chafe, Professor of Linguisitics, University of California, along with his biographical sketch. No other evidence was presented by the Company in support of its election objections, and no evidence was requested by the Board or offered by the Union to refute the expertise of Drs. Hammer and Chafe in the field of linguistics and semantics.

On August 11, 1978, the Board's Regional Director issued his Report on Objections and Recommendation that Certification of Representative issue in Case No. 18-RC-10677. The Regional Director found no merit to the Company's election objection and recomended that it be overruled in its entirety and that a

certification of representative should issue. The Company filed timely exceptions to the Regional Director's report with exhibits and supporting brief in which the Company contended that the Regional Director erred in concluding a written representation made by the Union in a campaign leaflet or handbill distributed to the voters shortly before the election was proper and did not justify setting aside the results of the second election. The Company also requested that Drs. Hammer and Chafe be allowed to argue orally before the Board on the issues raised by the Company's election objection and/or be allowed to give expert testimony at a hearing on the Company's exceptions to the Regional Director's report.

On November 15, 1978, the Board issued its Decision and Certification of Representative in Case No. 18-RC-10677 in which it denied the Company's request for oral argument, adopted the Regional Director's findings and recommendations, and certified the Union as exclusive bargaining representative for the employees in the unit. By letter dated November 22, 1978 from Company Counsel to the Board's Regional Director, the Company gave notice that it would seek appellate review of the Board's Decision and Certification of Representative and would technically refuse to bargain with the Union on the ground that the certification was invalid.

On November 29, 1978, the Union filed a charge in Case No. 18-CA-6075 alleging the Company violated the Act by refusing to bargain. On December 14, 1978, a complaint and notice of hearing was issued alleging a violation of Section 8(a)(5) of the Act. The Company duly answered the complaint, admitting in part and denying in part the allegations contained therein. On February 6, 1979, Counsel for the General Counsel filed a Motion for Summary Judgment on the ground that the Company's answer raised no issues of fact requiring a hearing and that the Company's answer only attempted to relitigate issues already resolved in the underlying representation proceeding. On February 15, 1979, the Board issued an Order transferring the

proceeding to the Board and a notice to show cause why the General Counsel's Motion for Summary Judgment should not be granted. The Company filed no response to the Board's notice to show cause.

On May 14, 1979, the Board issued its Decision and Order granting the motion for summary judgment and ordering the Company to cease and desist from refusing to bargain with the Union. It is from this Board Order that the instant case comes before this Court. See generally, *Boire* v. *Greyhound Corp.*, 376 U.S. 473, 477, (1964); *Boaz Spinning Co.* v. *NLRB,* 439 F.2d 876, 878 (6th Cir. 1971).

II.

STATEMENT OF THE FACTS

The relevant facts are not in dispute. Approximately four days prior to the second election the Union caused to be mailed to all eligible voters a four-page leaflet or flyer in question and answer form entitled "We were asked . . . about the election." One of the questions and answers contained in the Union leaflet was,

> Q Will we have to pay the initiation fee after our new contract is negotiated and we accept it?
>
> A No! Your local Union will waive the customary initiation fee for all the employees on the Employer's payroll at the time your new contract is accepted by you. *This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your Union contract.* (Emphasis supplied).

In a footnote to his report the Regional Director stated that the ". . . Union admits that it caused this document to be mailed to the employees of the Employer, and did so in approximately the time frame alleged by the Employer." The Company's objection alleged: "Prior to the election the Union made

an unlawful waiver of initiation fees that was connected with support for the Union, that was related to a vote in the election and was made without a clear distinction between joining the Union before or after the election."

In recommending that the Company's objection be overruled and the Union be certified as bargaining representative, the Regional Director concluded that the quoted language waiving initiation fees by the Union was not improper. The Regional Director cited the Supreme Court's decision in *NLRB* v. *Savair Mfg. Co.*, 414 U.S. 270 (1973) and two Board cases decided after *Savair.*[3]

There was no indication that the Regional Director even considered the evidence presented by Drs. Hammer and Chafe, the two linguistics experts, in reaching his conclusion that the Union's initiation fee waiver was not objectionable conduct that affected the results of the election. On appeal, the Board issued a *pro forma* adaptation of the Regional Director's findings and recommendations with no mention made of this evidence.

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[3] The facts in the two cases cited by the Regional Director are inapposite to the instant case. In *Endless Mold, Inc.*, 210 NLRB 159 (1974), the Board found the union's initiation fee waiver was permissible where the Union had stated in a letter: "INITIATION FEES: Cost of Joining UAW has been waived for all Endless Mold Employees," because the waiver was not conditioned on supporting the union in any manner. In *Irwindale Division, Lau Industries*, 210 NLRB 182 (1974), the Board found that it was permissible for the Union to state that initiation fees would be waived for all employees if they were employed at the time the contract was signed.

REASONS FOR GRANTING THE WRIT

The Court of Appeals has Decided a Federal Question in a Way Which Conflicts with Applicable Law of the Supreme Court.

The judgment of the Court of Appeals for the District of Columbia Circuit conflicts with the holding of the Supreme Court in *NLRB* v. *Savair Mfg. Co.*, 414 U.S. 270 (1973). In that case the Supreme Court stated that a union could preserve its legitimate interests by the waiver of initiation fees not only for those who signed up with the union before an election but also for those who joined after the election. However, the Supreme Court denied unions the right to buy endorsements and paint a false portrait of employee support during an election campaign by reducing or eliminating initiation fees on the condition that the employees sign an authorization card prior to the election.

The Board has reiterated and applied the *Savair* test for the validity of initiation fee waivers in a number of cases. See *Endless Mold, Inc.*, 210 NLRB 159 (1974); *Irwindale Division, Lau Industries,* 210 NLRB 182 (1974); *The Coleman Co.*, 212 NLRB 927 (1974). In *Coleman, supra,* the Board found objectionable the Union's waiver of initiation fees where the Union had stated:

> "The initiation fee will be waived for all present employees who make application for charter membership in your new local union."

212 NLRB at 927.

The Board noted that the promise of benefit was ambiguous and by its terms lacked the detail concerning when the application for charter membership had to be made in order for an employee to be eligible for the waiver. The Board found the union's waiver was susceptible of interpretation by the employees that they would benefit by making a union commitment before the election and thereby "come in at the ground

floor" to avoid paying the initiation fee. The Board concluded that it was the union's duty to clarify the ambiguity or suffer whatever consequences might attach to employees' possible interpretations of the ambiguity. See also *Inland Shoe Mfg. Co.*, 211 NLRB 843 (1974).

A waiver is permissible only where it is unconnected with support for the union before the election, unrelated to a vote in the election, and with support for the union before the election, and without distinction between joining the union before or after the election. *Deming Division, Crane Co.*, 225 NLRB 657, 659 (1976).

Following the *Savair* decision, the courts of appeals have held that an unconditional waiver is not coercive and therefore does not impede the free choice of employees in an election. See, e.g., *NLRB* v. *Spring Road Corp.*, 577 F.2d 586, 588-89 (9th Cir. 1978); *Certain-Teed Products Corp.* v. *NLRB*, 562 F.2d 500, 503-04 (7th Cir. 1977); *Solon Mfg. Co.* v. *NLRB*, 544 F.2d 1108, 1110-11 (1st Cir. 1976); *Prudential Ins. Co. of America* v. *NLRB*, 529 F.2d 66, 69 (6th Cir. 1976), *cert. denied*, 425 U.S. 975 (1976); *NLRB* v. *Con-Pac, Inc.*, 509 F.2d 270, 272-73 (5th Cir. 1975); *NLRB* v. *Wabash Transformer Corp.*, 509 F.2d 647, 649-50 (8th Cir. 1975); *NLRB* v. *Stone & Thomas*, 502 F.2d 957, 958 (4th Cir. 1974). In each of these cases the language of the union's waiver offer was clear that it was not contingent upon preelection support or upon how an employee voted in the election.

The circuit courts have also held that where there is sufficient confusion regarding the union's waiver of initiation fees so as to interfere with the employees' free choice in a representation election, the Board is not warranted in certifying the Union that won the election. *NLRB* v. *Johnson and Hardin Co.*, 554 F.2d 275 (6th Cir. 1977); *NLRB* v. *Stone & Thomas, supra*, at 959. In *NLRB* v. *Aladdin Hotel Corp.*, 584 F.2d 891 (9th Cir. 1978), the union's preelection letter to employees promised a reduction in

initiation fees "for this organizing campaign." The court held this phrase could properly be interpreted as applying to the period before the election but not after the election, thus interfering with the employees' free and fair choice of bargaining representative. In denying enforcement of the Board's order the court said:

> "Where a fee waiver offer is communicated to employees in a confusing fashion and a responsible interpretation of the offer is contrary to the requirements of *Savair* then the election should be set aside. *NLRB* v. *Johnson and Hardin Co.*, 554 F.2d 275 (6th Cir. 1977) (per curiam). The Board itself has interpreted a union statement that 'there will be no initiation fees for anyone joining now during this campaign' as violating the *Savair* rule, a finding which requires invalidation of the election. *Deming Division, Crane Co.*, 225 NLRB 657 (1976). We think the offer in this case was equally violative of the *Savair* rule. It reasonably can be interpreted as an offer to reduce dues only until the election is held; therefore it significantly impaired the free choice of those voting in the election."

548 F.2d at 893.

Where confusion exists as to the extent of the Union's preelection offer, the courts have denied enforcement of the Board's order which is predicated upon the prior representation proceedings. *NLRB* v. *Aladdin Hotel Corp., supra; NLRB* v. *Johnson and Hardin Co., supra; NLRB* v. *Stone & Thomas, supra.*

In the instant case, the Union's offer to waive its initiation fees was made in a confusing fashion and was susceptible of an interpretation by employees that it would be to their pecuniary benefit to make a union commitment before the election. As previously noted, the Union caused to be mailed to the employees a four-page flyer in question and answer form approximately four days prior to the representation election con-

ducted on July 21, 1978. One question in the flyer asked if employees would have to pay an initiation fee after the contract was negotiated and accepted. The Union's answer read:

> No! Your local union will waive the customary initiation fee for ALL employees on the Employer's payroll at the time your new contract is accepted by you. *This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your union contract."* (Emphasis supplied).

After the Company filed timely objections to the election and during the Regional Director's investigation of same, material evidence was presented on the Company's behalf by Dr. Katherine Hammer and Dr. Wallace Chafe, noted experts in the field of linguistics and semantics, to the effect that the third sentence (italicized) constitutes a qualification of the otherwise proper language contained in the second sentence of the answer. In her analysis of the emphasized language quoted above Dr. Hammer stated:

> There are two problems with the passage in question: (1) because of the tense and subordinating conjunction (i.e., *because*) involved, the juxtaposition of sentences two and three suggests a conditional utterance; and (2) the use of the coordinating conjunction *and* in sentence 3 refers to a set of employees characterized as having given extra effort both to win their NLRB election and negotiate their contract. . . . Thus, on one reading it can be argued that the effect of the use of AND in sentence 3 of the passage in question is to characterize a set of employees who both: (a) struggled to win their NLRB election and (b) struggled to negotiate their union contract. Since one can win an election only by the number of votes acquired and one can vote only if eligible, Mr. Carey's analysis on page 2 of his Objection can be justified. (App. B p. A-23).

In overruling the Company's objection, and thereby certifying the Union as bargaining representative, both the Regional Director and the Board ignored the analysis of the third sentence made by Dr. Hammer and concurred in by Dr. Chafe, to the effect that the sentence constituted a "conditional utterance." Such a conditional utterance would be objectional under the standards established in *Savair.*

The nature of the qualification or "conditional utterance" is that the use of the coordinating conjunction *and* in the third sentence creates a class of employees which logically includes only those employees:

(1) who are eligible to vote;

(2) who do in fact vote;

(3) who vote for the union;

(4) who negotiate the contract.

There would have been no qualification of the second sentence had the third sentence used another coordinating conjunction such as OR which Webster's New World Dictionary of the American Language, College Edition, defines as ". . . introducing an alternative. . ." An employee reading the third sentence would have understood that in order to receive the financial reward of the fee waiver he would *not* have to qualify under all four categories of the above class but could if he chose, merely be a part of the fourth category — an event which clearly could occur only after the election.

Expressed differently, the use by the Union of the coordinating conjunction OR in the third sentence would have conveyed the meaning that the employee could do one (vote for union) or the other (negotiate the contract), whereas the use of the coordinating conjunction AND conveys the meaning that the employee is required to do both if the reward of the waiver is to be realized. In requiring an employee to do both, it logically

follows that the employee is not presented with the choice of doing only one, i.e. negotiate the contract, and thus the language constitutes a qualification or "conditional utterance." Dr. Chafe, after reading Dr. Hammer's analysis of the language, observed:

> "In my opinion the objections raised by Professor Hammer are correct. First, the clause 'because of the extra effort you have given in your struggle to win your NLRB election and negotiate your contract' could not be taken literally at the time the flyer in question was distributed since the election had not been held at that time. As a result, these words could only be interpreted as a condition: 'If you make this extra effort, the initiation fee will be waived.' Second, by far the most likely interpretation of this clause is one in which the conjunction 'AND' creates a set of people who *both* vote for the union *and* negotiate the union contract, as Mr. Carey also notes on page 2 of his Objection. In my opinion, any other interpretation would be forced, and would not likely have been made by the readers of this flyer."

The conditional language in sentence 3 of the Union's answer violates the clear "before" and "after" requirement of the Supreme Court in *Savair* and the Board in *Deming Division, Crane Co.* Moreover, the language is susceptible of an interpretation by the employees that they must make a union commitment before the election. Thus the waiver is impermissible and the language constitutes sufficient grounds for setting aside the results of the second election. See also *Gulf Coast Automotive Warehouse Co.*, 588 F.2d 1096 (5th Cir. 1979).

CONCLUSION

It is well established that an NLRB election must be conducted in such a manner as to reflect the free and untrammeled choice of the employees. Misconduct such as this record establishes manifestly has the tendency to affect the results of

the election and to prevent the election from representing the free expression of the choice of the affected employees. The Board's failure to set aside the results of the second election was erroneous, and the Court of Appeals for the District of Columbia erred in enforcing the Board's Order. The Circuit Court did not properly apply the teaching of this Court in *Savair*. The Board's Order dated May 14, 1979 should be set aside and its cross application for enforcement denied. In the alternative, the case should be remanded to the Board with the direction that the Company be afforded a full and fair hearing to resolve the substantial and material factual issues raised by the Company's objection to the election conducted on July 21, 1978.

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

TAMA MEAT PACKING COMPANY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Petition for a Writ of Certiorari have this date been served upon the parites named below by depositing same in the United States Mail, properly addressed, with correct postage affixed.

Elliott Moore, Esquire
Deputy Associate General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
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Mr. William M. Bernstein
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National Labor Relations Board
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Mr. Wade H. McCree, Jr.
Solicitor General
Department of Justice
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This 14 day of August, 1980.

_____

Bennet D. Alsher

APPENDIX

APPENDIX A

United States of America
Before the National Labor Relations Board
Eighteenth Region

Tama Meat Packing Corp., Employer, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO, Petitioner.	Case No. 18-RC-10677

REPORT ON OBJECTIONS AND RECOMMENDATION THAT CERTIFICATION OF REPRESENTATIVE ISSUE

(Dated 8/11/78)

Pursuant to a petition filed on October 1, 1975, and the provisions of a Stipulation for Certification Upon Consent Election agreement approved by the Acting Regional Director on October 24, 1975, an election by secret ballot was conducted

among certain employees of the Employer on December 5, 1975.[1] The results of the election are set forth in the Tally of Ballots served on the parties on the day of the election.[2]

On December 12, 1975, the Petitioner filed timely objections to conduct affecting the results of the election, a copy of which was duly served upon the Employer. On December 11, 1975, Petitioner's Objection Nos. 1, 2, 4, 5, 6, 8, 9 and 10 were made the subject of an unfair labor practice charge in Case No. 18-CA-4809 in which Complaint and Notice of Hearing issued on February 20, 1976. Subsequently, Case No. 18-CA-4809 and the objections in Case No. 18-RC-10677 were consolidated for the purpose of hearing by order of the Regional Director, dated March 11, 1976. On May 3, 1976, the consolidated cases came on for hearing before Administrative Law Judge Josephine H. Klein of the National Labor Relations Board.

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[1] The appropriate collective bargaining unit agreed to by the parties is as follows:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Tama, Iowa facility including plant clerical employees, meat graders, yard drivers and shag drivers; excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

[2]

Approximate number of eligible voters	160
Void ballots	0
Votes cast for Petitioner	69
Votes cast against participating labor organization	85
Valid votes counted	154
Challenged ballots	3
Valid votes counted plus challenged ballots	157

Challenges are not sufficient in number to affect the results of the election.

On July 21, 1976, prior to the issuance of a decision by the Administrative Law Judge, charges alleging violations of Section 8(a)(1) and (3) were filed in Case No. 18-CA-5065.

On August 10, 1976, the Administrative Law Judge issued her decision in Case Nos. 18-CA-4809 and 18-RC-10677 and, on the same date, the cases were transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Employer had engaged in certain unfair labor practices and, further, recommended that the Petitioner's Objection Nos. 1, 2, 4, 5, 6, 8, 9 and 10 be sustained, that the election held in Case No. 18-RC-10677 on December 5, 1975, be set aside and that said case be remanded to the Regional Director for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of a bargaining representative.

On September 30, 1976, the Board issued an Order and Direction of Second Election, sustaining Petitioner's Objection Nos. 1, 2, 4, 5, 6, 8, 9 and 10, and ordering that the election conducted on December 5, 1975, in Case No. 18-RC-10677 be set aside. However, Case No. 18-RC-10677 remained blocked by Case No. 18-CA-5065 until the Petitioner filed a Request to Proceed, which was received by the Regional Director on June 14, 1978.

Pursuant to the Board's Order and Direction of Second Election which had issued on September 30, 1976, a second election was conducted among certain employees of the Employer on July 21, 1978.[3] The results of that election are set forth in the Tally of Ballots served on the parties on that date.[4]

---

[3] Cf. footnote 1.

[4]

Approximate number of eligible voters	190
Void ballots	1
Votes cast for Petitioner	94
Votes cast against participating labor organization	59

On July 21, 1978, the Employer filed timely objections to conduct affecting the results of the second election, a copy of which was duly served on the Petitioner.

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the undersigned has investigated the issues raised by the objections and hereby reports as follows:

The Objection

The Employer's objection alleges, that, "PRIOR TO THE ELECTION THE UNION MADE AN UNLAWFUL WAIVER OF INITIATION FEES THAT WAS CONNECTED WITH SUPPORT FOR THE UNION: THAT WAS RELATED TO A VOTE IN THE ELECTION AND WAS MADE WITHOUT A CLEAR DISTINCTION BETWEEN JOINING THE UNION BEFORE OR AFTER THE ELECTION."

The Evidence

In support of its objection the Employer alleges that "on or about July 17, 1978, the Union caused to be mailed to the employees a four page flyer in question and answer form entitled "We were asked . . . about the election."[5] The Employer alleges further that the reverse side of the first page contains the question and answer:

Valid votes counted	153
Challenged ballots	25
Valid votes counted plus challenged ballots	178

Challenges are not sufficient in number to affect the results of the election.

[5] The Union admits that it caused this document to be mailed to the employees of the Employer, and did so in approximately the time frame alleged by the Employer.

Q. Will we have to pay the initiation fee after our new contract is negotiated and we accept it?

A. No! Your local Union will waive the customary initiation fee for all the employees on the Employer's payroll at the time your new contract is accepted by you. This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your Union contract.

The Employer contends that the third sentence in the answer, "This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your Union contract," is a qualification of the otherwise proper language contained in the second sentence of that answer.

In support of the objection, the Employer argues that, "The nature of the qualification is that the use of the co-ordinating conjunction *and* in the third sentence creates a class of employees that logically includes only those employees: 1.) Who are eligible to vote, 2.) Who do in fact vote, 3.) Who vote for the Union, 4.) Who negotiate the Contract," and that "such language is conditioned and precludes the clear 'before' and 'after' requirement of the United States Supreme Court in *Savair Mfg. Company*, 414 U.S. 270 (1973) and by the Board in *Crane, Co.*, 225 NLRB No. 87 (1976)."

Based upon the foregoing and the evidence as a whole, I am unable to conclude that the waiver of initiation fees here was improper.[6] Accordingly, I find that the Employer's objection is without merit and I recommend that it be overruled.

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[6] *Savair Mfg. Company*, 414 U.S. 270 (1973); *Endless Mold Inc.*, 210 NLRB 159 (1974); *Irwindale Division, Lav Industries*, 210 NLRB 182 (1974).

Conclusion and Recommendation

As the undersigned concludes that the Employer's objection raises no substantial or material issue with respect to conduct affecting the results of the election, it is hereby recommended that it be overruled in its entirety.

It is further recommended that the Board issue a Certification of Representative to Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO.[7]

Signed at Minneapolis, Minnesota, this 11th day of August, 1978.

/s/ Robert J. Wilson
Regional Director
National Labor Relations Board
Eighteenth Region

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[7] Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by August 24, 1978.

Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not a part of the record unless included in the Regional Director's Report, or appended to the exceptions or opposition thereto which a party submits to the Board.

APPENDIX B

EXCEPTIONS TO THE REPORT OF THE REGIONAL DIRECTOR ON OBJECTION AND RECOMMENDATION THAT CERTIFICATION OF REPRESENTATIVE ISSUE

(Dated 8/18/78)

FILED ON BEHALF OF THE EMPLOYER

By Joseph P. Carey, Attorney of Record

I. Statement of the Case

This is an election proceeding, pursuant to an order of the Board on September 20, 1976 which set aside an election between the parties that was conducted on December 5, 1975 and ordered a second election which was conducted on July 21, 1978. On July 26, 1978, the Employer filed a timely objection to the conduct affecting the results of the election. On August 11, 1978, the Regional Director issued his report on Objections and recommendation that Certification of Representative Issue, wherein he found no merit to the Employer's Objection and recommended that it be overruled in its entirety and that Certification of Representative should issue. These are exceptions to such report and recommendation of the Regional Director.

II. The Exceptions

Exception No. 1

The Employer takes exception to the conclusion of the Regional Director that the Waiver of initiation fees by the Union in the July 17, 1978 flyer was proper.

Exception No. 2

The Employer takes exception to the conclusion of the Regional Director that the Employer's Objection is with-

out merit and raises no substantial or material issue with respect to conduct affecting the results of the election.

Exception No. 3

The Employer takes exception to the recommendation of the Regional Director that the Employer's Objection be overruled in its entirety and that the Board issue a Certification of Representative to the Union.

III. The Evidence

In support of these Exceptions is attached the following documents:

a) Objection to conduct effecting the results of the Election, dated July 26, 1978, filed by the undersigned and marked Exhibit 1.

b) Objection (supplemental) to conduct affecting results of the Election, dated August 3, 1978, filed by Doctor Katherine Hammer on behalf of the Employer at the request of the undersigned and marked Exhibit 2.

c) Supporting Position Statement, dated August 14, 1978 filed by Doctor Wallace L. Chafe on behalf of the Employer at the request of the undersigned and marked Exhibit 3.

IV. Request for Oral Argument and/or Board Direction to the Regional Director or Other Agent of the Board to Issue Notice of Hearing on Said Exceptions

Request is hereby made pursuant to Section 102.69(f) of the Board's Rules and Regulations that the Board grant oral argument on these exceptions and/or that the Board direct the Regional Director or other Board Agent to issue a Notice of Hearing on these Exceptions to resolve the substantial and material factual issues raised by the Objection filed on behalf of the Employer.

It is respectfully submitted that since 1957, the scientific study of language systems, i.e., Linguistics, has made a significant contribution to our legal system. The Board is asked to take judicial notice of the fact that our judicial system has drawn upon the knowledge of linguists to assist in resolving factual disputes concerning the meaning of written language. One prominent example is a proceeding in a surrogate's court for the contest of wills.

The Employer requests that Doctor Hammer and Doctor Chafe be allowed to argue orally before the Board on the issues raised by the Objection and/or be allowed to give expert testimony at a hearing on these exceptions.

The Employer, therefore, seeks an order of the National Labor Relations Board setting aside the election conducted on July 21, 1978 in the above captioned case and ordering another election.

Respectfully submitted,

TAMA MEAT PACKING CORP.
Employer

/s/ JOSEPH P. CAREY
Attorney of Record

Dated at Tarrytown, New York
this 18th day of August 1978

HAND DELIVERED BY FEDERAL EXPRESS

Exhibit No. 1 to Exceptions
Joseph P. Carey
Counselor at Law

July 26, 1978

Mr. Robert J. Wilson
National Labor Relations Board
Region 18
316 Federal Building
110 South Fourth Street
Minneapolis, Minnesota 55401

RE: Tama Meat Packing Corp.
Case No. 18-RC-10677

Dear Mr. Wilson:

Enclosed please find for filing with you, pursuant to Section 102.69(a) of the Board's Rules and Regulations, an original and three copies of Objection to Conduct Affecting the Results of the Election.

This will certify that a copy of this document is simultaneously being served upon Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46, 1651 Sycamore Street, Waterloo, Iowa, 50703, certified mail, return receipt requested.

The Objection filed by the Employer necessarily involves disciplines outside of the field of Labor Law, as appears in the Statement of Reasons. I have therefore engaged the services of a linguist and grammarian and am sending her a copy of this document. Pursuant to Section 102.69(a) I hereby request the opportunity to forward to you Doctor Hammer's analysis of the subject language, which I am informed will be completed no later than August 9th.

Very truly yours,

/s/ Joseph P. Carey

JPC:EJS

cc: Allen Hamood, Tama Meat Packing Corp.

Doctor Carson W. Veach

Director Altoona Campus

Pennsylvania State University, Altoona, Pa. 16601

Doctor Katherine G. Hammer, Dept. of English

Avery Hall, Washington State University

Pullman, Washington 99164

Exhibit 1 to Exceptions

United States of America
Before the National Labor Relations Board
Eighteenth Region

In the matter of: Tama Meat Packing Corp. Employer, and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46, Petitioner.	Case No. 18-RC-10677

Objection To Conduct Affecting
The Results Of The Election

FILED ON BEHALF OF THE EMPLOYER

By Joseph P. Carey
Attorney of Record
555 White Plains Road
P.O. Box 7
Tarrytown, New York 10591

Objection

PRIOR TO THE ELECTION THE UNION MADE AN UNLAWFUL WAIVER OF INITIATION FEES THAT WAS CONNECTED WITH SUPPORT FOR THE UNION; THAT WAS RELATED TO A VOTE IN THE ELECTION AND WAS MADE WITHOUT A CLEAR DISTINCTION BETWEEN JOINING THE UNION BEFORE OR AFTER THE ELECTION.

Statement of Reasons

On or about July 17, 1978, the Union caused to be mailed to the employees a four page flyer in question and answer form entitled "We were asked . . . about the election." Attached is a copy of said document.

On the reverse side of the first page, in the upper left corner contains the following question and answer:

> "Q. Will we have to pay the initiation fee after our new contract is negotiated and we accept it?
>
> "A. No! Your local Union will waive the customary initiation fee for ALL the employees on the Employer's payroll at the time your new contract is accepted by you. This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your Union contract."

It is the Employer's contention that the third sentence in the answer:

"THIS IS DONE BECAUSE OF THE EXTRA EFFORT YOU HAVE GIVEN IN YOUR STRUGGLE TO WIN YOUR NLRB ELECTION AND NEGOTIATE YOUR UNION CONTRACT" (emphasis supplied).

Is a qualification of the otherwise proper language in the second sentence, which is obviously copied from the Board's decision in Irwindale 210 NLRB No. 42. (1974).

The nature of the qualification is that the use of the co-ordinating conjunction AND in the third sentence creates a class of employees that logically includes only those employees:

1) Who are eligible to vote

2) Who do in fact vote

3) Who vote for the Union

4) Who negotiate the Contract

There would have been no qualification of the second sentence had the third sentence used another co-ordinating conjunction such as OR which Webster's New World Dictionary of the American Language, College Edition, defines as ". . . introducing an alternative . . .". The employee reading the flyer would understand that the reward of the waiver did not necessarily apply to the above class. Expressed differently, the use by the Union of the co-ordinating conjunction OR in the third sentence would convey the meaning that the employee could do one (vote for Union) or the other (negotiate the contract), whereas the use of the co-ordinating conjunction AND conveys the meaning that the employee is required to do both, if the reward of the waiver is to be realized. And in requiring the employee to do both, it logically follows that the employee is not presented with the choice of doing only one, i.e., negotiate the contract. Such language is conditional and precludes the clear "before" and "after" requirement of the United States Supreme Court in Savair Mfg. Company, 414 U.S. 270 (1973) and by the Board in Crane Co., 225 NLRB No. 87 (1976).

The Board in Crane, on remand from the Sixth Circuit, set forth the following test for a permissible waiver of initiation fees:

> ". . . A waiver is permissible only where it is unconnected with support for the Union before the election, unrelated to a vote in the election and with support for the Union before the election, unrelated to a vote in the election, and without distinction between joining the Union before or after the election."

The offending phrase in Crane, "anyone joining now during this campaign" was held by the Board to be ". . . susceptible of an interpretation by the employees that they must make a Union commitment before the election." It is submitted that the Union's language in the third sentence of the answer, above described, is also susceptible of the same interpretation as found by the Board in Crane.

It is most respectfully submitted, that, due to the rapid changes in the disciplines of linguistics and grammar since 1957 that the Regional Director refer to the following scholarly published works:

> **THE MAJOR SYNTACTIC STRUCTURES OF ENGLISH** BY ROBERT P. STOCKWELL, PAUL SCHACHTER AND BARBARA HALL PARTEE, PUBLISHED BY HOLT, RINEHART AND WINSTON (1973) (See chapter 6 on Conjunctions)
>
> **BUT AND THE DENIAL OF SUB-SETS** BY KATHERINE G. HAMMER—PUBLISHED DISSERTATION AT THE UNIVERSITY OF IOWA (1973)

The Employer therefore suggests that the Regional Director issue a Report recommending that the election be set aside and another election scheduled.

Respectfully submitted,

Tama Meat Packing Corp.,
Employer

By: /s/ Joseph P. Carey
Attorney of Record

Dated at Tarrytown, New York this 26th day of July, 1978

Facts About the Election

Date: July 21, 1978

Hours: 1:00-3:00 p.m.

Place: Employer's premises in Tama

VOTE [X] YES
FOR
A.M.C.B.W.-N.A.
Amalgamated
Meat Cutters and Butcher Workmen
of North America / AFL-CIO
Local No. P-46

WE WERE ASKED . . . ABOUT THE ELECTION

Q. If we vote YES, do we automatically become members of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO?

A. No.

FIRST, You win the election by voting YES. This gives the union the right—by law— to be your collective bargaining representative. This gives you and your fellow employees an opportunity to have a voice in determining your wages, benefits and working conditions.

SECOND, you—the employees—then meet and draw up your proposals for your union contract. YOU determine precisely what you want negotiated on your behalf.

THIRD, You select a Negotiating Committee from among your fellow employees.

FOURTH, your Negotiating Committee and union representatives negotiate a contract with your employer.

FIFTH, you—the employees—meet to accept or reject the contract offer from the employer. It is your choice to become a member after you accept the contract negotiated by your union committee.

You will not have to make that decision as to whether to become a member until AFTER you have seen exactly how much in increases and benefits you will receive in your new union contract.

Q. Why is the employer fighting so hard to defeat our efforts to organize a union?

A. He knows that a union provides a balance of power between the employees and the employer. He knows that the union brings skills and training to the bargaining table and that enables the union to bargain for good wages, sound working conditions, good pensions and substantial health insurance benefits. He fights so hard because he simply doesn't want to pay.

Q. Will anyone know how I voted in the election?

A. No! The election is conducted by the National Labor Relations Board (the NLRB is an agency of the federal government). The vote will be by SECRET BALLOT. No one will know how you voted.

Q. If Union representation is voted in by the employees, can we vote it out if we are not satisfied after trying it?

A. YES! The law that gives you the right to have union representation also provides the right to vote it out if you are not satisfied.

Q. Who draws up our Contract?

A. YOU DO!!! All the employees in the bargaining unit should contribute to the proposals. Some of the issues that have been expressed to us as being problem areas and/or areas that need improvements are:

1. Wages and inflation protection
2. Employer-paid health care insurance for employee and dependents
3. An effective grievance procedure
4. Job security
5. Seniority provisions
6. Additional PAID holidays
7. Improved vacations

Q. It is possible to have our insurance paid completely by the employer and cover our dependents too?

A. YES! Most union contracts include fully paid insurance for employees *AND* dependents.

Q. Is there any limit as to what we can ask for in regard to wages or benefits?

A. NO. Keep in mind, however, what you ask for should be reasonable and justified.

Q. Who will do the negotiating?

A. 1. The employer and his Labor Relations representative.

2. A Negotiating Committee elected by you along with your Local Union representatives and your International Representatives.

Q. Do we have to accept what has been negotiated?

A. NO! If you do not feel you have gained enough in negotiations, you have the right to vote to reject the contract offer.

Q. If we vote to form a Union, can the employer cut our wages or reduce the few benefits we now receive?

A. NO! That would violate Federal Law! Therefore, you will negotiate *UP* from current wages and benefits.

Q. If there is no union, what will the policy of the employer be as to wages, working conditions and fringe benefits.

A. You certainly know about that from bitter experience this past year. Without a union to represent you, the employer has offered only a paltry wage increase and *NOTHING ELSE.* You need improvement in all of the items described in the contract above.

You simply cannot trust the employer to look after YOUR interests.

Just think of how much farther ahead you would be now if you had a union contract to cover you for the past year. You were badly cheated. Don't let it happen again. Vote YES.

Q. What is some Union goes on strike elsewhere? What happens to us?

A. Nothing—you would continue to work. You would not go out on strike in support of any other Union.

ABOUT DUES AND STRIKES

Q. Will we have to pay the initiation fee after our new contract is negotiated and we accept it?

A. NO! Your Local Union will waive the customary initiation fee for *ALL* the employees on the employer's payroll at the time your new contract is accepted by you. This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your union contract.

Q. When do we start paying Union Dues?

A. *NO UNION DUES* until AFTER you have accepted a contract and have started to receive the increases in wages and benefits it contains.

Q. Can the union ever force us out on strike?

A. No. The only way a strike could occur would be if a majority of the employees voted for it. This vote is by secret ballot so you decide, not the Union leaders.

ABOUT CONTRACTS

Q. When we win the election, will the employer have to negotiate with us?

A. YES! Federal law says that the employer must negotiate "in good faith."

Q. What is a union contract?

A. A union contract is a document that is binding by law, negotiated with the employer, and provides for wages, benefits, hours and general working conditions.

Exhibit No. 2 to Exceptions

WASHINGTON STATE UNIVERSITY
Pullman, Washington 99163

Department of English
August 3, 1978

Mr. Vincent Cimmino
National Labor Relations Board
Region 18
316 Federal Building
110 South Fourth Street
Minneapolis, Minnesota 55401

RE: Tama Meat Packing Corp.
Case No. 18-RC-10677

Dear Mr. Cimmino:

Enclosed please find for filing with you a Supplemental Objection to the Objection filed by Joseph Carey on July 26, 1978, on behalf of the Tama Meat Packing Corp., Case No. 18-RC-10677.

This will certify that a copy of this document is simultaneously being served upon Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46, 1651 Sycamore Street, Waterloo, Iowa, 50703, certified mail, return receipt requested.

Very truly yours,

/s/ Katherine Hammer

cc: Joseph Carey, 555 White Plains Road,
P.O. Box 1, Tarrytown, New York 10591

Wallace Chafe, Dept. of Linguistics,
UC-Berkeley, Berkeley, California 94720

Exhibit No. 2 to Exceptions

United States of America
Before the National Labor Relations Board
Eighteenth Region

In the matter of: Tama Meat Packing Corp. Employer and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46 Petitioner	Case No. 8-RC-10677

Objection To Conduct Affecting The Results Of The Election

FILED ON BEHALF OF THE EMPLOYER

By Katherine Hammer
Department of English
Washington State University
Pullman, Washington 99164

At the request of:

Joseph P. Carey
Attorney of Record
555 White Plains Road
P.O. Box 7
Tarrytown, New York 10591

Objection (Supplemental)

The following constitutes a Supplemental Objection to the Objection to Conduct Affecting the Outcome of an Election filed by Joseph Carey on July 26, 1978, on behalf of the Tama Meat Packing Corporation, Case No. 18-RC-10677.

Mr. Carey contacted me through Carson Veach, who as my former dean while I was an assistant professor at Coe College in Cedar Rapids, Iowa, was aware that I had done extensive work on conjunction as part of fulfilling my doctoral work at the University of Iowa in 1973. I am currently an assistant professor of English at Washington State University where I regularly teach graduate level courses in syntax. (Please see the attached Vita for a fuller listing of my qualifications and publication and research.) In addition, the following material has been reviewed by Geoffrey Gamble, another linguist (Ph.D., University of California, Berkeley. See attached Vita.) at Washington State University in the Department of Anthropology. I am also in the process of consulting with Wallace Chafe of UC-Berkeley regarding this matter.

Linguistics is the scientific study of language systems and linguistic inquiry has constituted a significant part of the intellectual history of the Western world since the time of the Greeks. However, the great shift in linguistic theory in this century, which has led to its becoming one of the fastest growing academic disciplines, was due to the publication of *Syntactic Structures* by Noam Chomsky in 1957. In the past traditional grammarians were content with "notional" definitions of the categories operating in language (i.e., parts of speech), paradigms based on Latin grammer, and various disconnected edicts regarding what constituted "proper" style. In contrast, structural linguists, influenced by behaviorism, avoided a normative stance and sought only to develop a well defined and objective methodology, which they considered necessary to be scientific, to describe languages without bias from either the

speaker(s) or the linguist. Chomsky's major contribution was not only to demand the explicitness aimed for by the structuralists, but to broaden the goals of the discipline itself. Maintaining that no other science is content simply to describe phenomena, Chomsky argued that linguists must seek to explain language, and thus in addition to describing the rules that generate the appropriate and correct structures within a language, the linguist must seek to explain how children acquire language, how one comprehends and produces language, and perhaps even how the structure of language relates to the neurological system. As part of how one comprehends language, the linguist must also seek to account for a speaker's intuitions about his language, i.e., when two utterances mean the same thing (synonomy), when one utterance means more than one thing (ambiguity), what an utterance entails, etc. And it is this type of situation with which Mr. Carey is concerned.

There are two problems with the passage in question (1) because of the tense and subordinating conjuction (i.e., *because*) involved, the juxtaposition of sentences two and three suggests a conditional utterance; and (2) the use of the coordinating conjunction *and* in sentence 3 refers to a set of employees characterized as having given extra effort both to win their NLRB election and negotiate their contract.

Problem 1. The *this is done* in sentence 3 refers to the entire proposition expressed in sentence 2 and thus the two sentences can be paraphrased in the following manner:

> Because of the extra effort you have given in your struggle to win your NLRB election and to negotiate your Union contract, your local union will waive the customary initiation fee for ALL the employees on the employer's payroll at the time your new contract is accepted by you.

If indeed the election had already been won at the time this passage was written, it could simply have been interpreted literally, as a statement of fact accompanied by a statement of

reason. However, the use of the present perfect tense in the subordinate clause with *because* could not be interpreted literally for the following reasons:

(1) *because* seems to be factive (see Kipasky and Kipasky, 1971) in that the material following it is assumed by the speaker/writer to be true. For instance note that the following sentence is unacceptable.

> *I will go because you want me to but you don't want me to.

(2) the use of the present perfect indicates that the action described in the following verb phrase has been completed or performed, as in *I've done the dishes* where this sentence can be uttered truthfully only in the case that the speaker has indeed completed washing the dishes.

Since the action described in the verb phrase in this passage (i.e., "given in your struggle. . . .") has not yet been performed or completed and thus the writer cannot believe that it has been completed, this statement (or these two statements) cannot be interpreted literally.

Elsewhere (Hammer, 1973a) I argue that when violation such as the one described above occurs, the utterance in question does not convey the illocutionary act, e.g., the act of asserting, requesting, etc., that it purports to and the hearer must therefore employ some conversational postulate (Gordon and Lakoff, 1971) to reinterpret the utterance. (For a discussion of the nature of the illocutionary act, see Searle, 1969.) In this case, the reinterpretation must be seen as a conditional sentence (one with the meaning If X, then Y) since the goal of the writer is to convince the reader to give effort to winning the election. In short, the effect of the two sentences in this passage is:

> If you give extra effort to . . . , then your local union will. . . .

Problem 2. McCawley (1968) argues that aspects of set theory must be incorporated into the formal grammar of English (and he suggests this is true for all languages) and that AND operates much like the union of sets. In Hammer 1973b, I further support this claim by arguing that set theoretic notions are necessary to characterize the use of *but* in English. (For an overview of current work on conjuction in English, see Chapter 6 of Stockwell, Schachter, and Partee, 1973).

While AND operates like the union of sets, its semantic effect varies depending upon the kinds of structures it conjoins. The effect of the structure NP^1 and NP^2 is to create a set such that to be a member of that set something must be an NP^1 or an NP^2. For instance, phrase *the tables and chairs* serves to establish a set of objects such that to be a member of that set an object must either be one of the tables or one of the chairs. However, while AND has the semantic effect of a conjunctive OR when it conjoins noun phrases, it does not necessarily do so when it conjoins predicates. For instance, in the sentence *The boys are willing and eager* the effect of the utterance can be either: (1) to assert that the set of boys in question is such that each individual member is both eager and able; or (2) to assert that the set of boys in question is characterized by these two qualities, but that individual members of the set may possess only one of these characteristics. Thus, on one reading it can be argued that the effect of the use of AND in sentence 3 of the passage in question is to characterize a set of employees who both: (a) struggled to win their NLRB election and (b) struggled to negotiate their union contract. Since one can win an election only by the number of votes acquired and one can vote only if eligible. Mr. Carey's analysis on page 2 of his Objection can be justified.

In conclusion, it is my opinion that the passage in question can be seen as constituting a conditional utterance where AND can be seen as establishing a set in the sense of (a) above.

Respectfully submitted,

TAMA MEAT PACKING CORP.
Employer

At the request of

JOSEPH P. CAREY
Attorney of Record

By: /s/ KATHERINE HAMMER
Assistant Professor
Department of English
Washington State University

Dated at Pullman, Washington this 3rd day of August 1978

REFERENCES

Chomsky, Noam. (1957). *Syntactic Structures,* The Hague: Morton.

Gordon, David and George Lakoff. (1971). Conversational postulates. In B. Dardin & C. Bailey (Eds.), *Papers from the Seventh Regional Chicago Linguistics Society.*

Hammer, Katherine. (1973a). Searle's conditions and the determination of illocutionary force, *Centrum: Working Papers of the Minnesota Center for Advanced Studies in Language, Style, and Literary Theory,* University of Minnesota.

Hammer, Katherine. (1973b). *But* and the Denial of Subsets, unpublished dissertation, University of Iowa.

Kipasky, Paul and Carol Kipasky. (1971). Fact. In D. Steinberg & L. Jakobovits' *Semantics.* Cambridge: Cambridge University Press.

Searle, John. (1969). *Speech Arts*. Cambridge: Cambridge University Press.

Stockwell, Robert, Paul Schachter, and Barbara Hall Partee. (1973). *The Major Syntactic Structures of English*. New York: Holt, Rinehart, and Winston.

VITA

Katherine Hammer
NE 635 Maple
Pullman, Washington 99163

Age: 31 (1-5-46)
Place of Birth:
Shreveport, Louisiana

Professional Positions:

1968-72 Teaching Assistant, University of Iowa

1973-75 Assistant Professor, Department of English, Coe College

1975- Assistant Professor, Department of English, Washington State Univ.

Educational Background:

B.A.	English	University of Iowa	1967
M.A.	Linguistics	University of Iowa	1969
Ph.D.	English Linguistics	University of Iowa	1973

Educational Honors and Research Experience:

NSF Transcript in Linguistics, 1967-69

Research Assistant to Robert S. Wachal on the Victoria Aphasia Project (Research Project No. 609-7-176, Canadian National Health, and MA-3691, Medical Research Council), 1972-73.

Courses Taught:

At WSU Engl 103 Composition for Foreign Students

Engl 108 Reading Literature

Engl 256 Organization of English

Engl 458 Psycholinguistics

Engl 537 Linguistics and the College English Teacher

Engl 543 Problems in English Linguistics: Syntax

UH 460 The History, Art, and Literature of the Celtic and Germanic Peoples

At Coe: English Composition, The English Language, Introduction to the Humanities, Collins Pilot Course in Interpersonal Relations, Through the Middle Ages with Literature and Film

At the University of Iowa: Freshman Rhetoric (10:1, 10:2, 10:3), Core Literature (courses in reading lit., dramatic lit., and medieval lit.), Introduction to Linguistics, Structure of English, Rhetoric for Foreign Students.

Publications, Presentations, and Proposals:

"The Role of Conditions on the Illocutionary Act," *Papers from the Mid-America Linguistics Conference,* 1973.

"Searle's Conditions and the Determination of Illocutionary Force," *Centrum: Working Papers of the Minnesota Center for Advanced Study in Language, Style, and Literary Theory,* University of Minnesota, Fall, 1973.

"Metaphor and Symbol as 'Deviant' Language," to appear in *Studies in Language* (the new title of the journal formerly known as *Foundations of Language*). Parts of this paper are to be delivered at the 1977 MMLA and MLA.

"Toward an Integrated Theory of Language Acquisition," a proposal submitted to WSU Grant-in-Aid Program. Funded ($3748) for the 1976-77 academic year.

Publications, Presentations, and Proposals (cont.)

"Toward an Integrated Theory of Language Acquisition," a proposal submitted to the National Institute of Child Health and Human Development (NIH), May 15, 1976. This proposal failed to receive funding.

"Problems in Bilingual Education," a presentation delivered to the October, 1976, workshop on "Today's Children—Tomorrow's Future," supported by a Washington Commission for the Humanities grant to the YWCA of WSU.

"Metaphor and Symbol as Instances of Linguistic Deviance," a paper to be delivered at the 1977 meeting of the Rocky Mountain MLA, Las Vegas, Nevada.

"In Support of Deviance," a paper to be delivered at the 1977 meeting of the Modern Language Association (Section: Linguistic Approaches to Literature), Chicago, Illinois.

Articles in Circulation and Research in Progress:

"Reconsidering the MLU," submitted to *Journal of Child Language* in October, 1977.

A revision of the grant proposal submitted to NICHD last year which will incorporate the data gathered in the pilot project (supported by WSU Grant-in-Aid).

An article outlining the results of the analysis of the first half of the data gathered in the above pilot project.

Service:

To Department:

Member, Hiring Committee, 1976-present.

Member, M.A. Examination Committee, 1976-present.

CAP Advisor, 1975-present.

English Advisor, 1976-present.

To University

Key personnel on grant "Today's Children-Tomorrow's Future," awarded to YWCA of WSU by Washington Commission for the Humanities, 1976-77.

Secretary, Discriminatory Practices Committee, 1977-78 (Member, 1976-77).

Member, International Awards Committee (term began: Spring, 1976).

Representative, University Senate (term began: June, 1977).

To Community

Vice President, Board, Community Day Care, Pullman, Washington, (Term began: May, 1977).

Professional Organizations, Offices:

Secretary, Linguistics, I, MMLA, 1973.

Chairman, Linguistics, I, MMLA, 1974.

Member MLA.

Member, LSA.

Exhibit No. 3 to Exceptions

UNIVERSITY OF CALIFORNIA, BERKELEY

Berkeley, California 94720

Department of Linguistics

August 14, 1978

Mr. Vincent Cimmino
National Labor Relations Board
Region 18
316 Federal Building
110 South Fourth Street
Minneapolis, Minnesota 55401

RE: Tama Meat Packing Corporation
Case No. 18-RC-10677

Dear Mr. Cimmino:

Enclosed please find for filing with you a Supplemental Objection to the Objection filed by Joseph Carey on July 26, 1978, on behalf of the Tama Meat Packing Corporation.

A copy of this document is simultaneously being served on the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46, 1651 Sycamore Street, Waterloo, Iowa, 50703, by certified mail, return receipt requested.

Sincerely yours,

/s/ Wallace L. Chafe
Professor of Linguistics

cc: Joseph Carey, 555 White Plains Road, P.O. Box 7, Tarrytown, New York 10591

Katherine Hammer, Department of English, Washington State University, Pullman, Washington 99163

Exhibit No. 3 to Exceptions

United States of America
Before the National Labor Relations Board
Eighteenth Region

In the matter of:
Tama Meat Packing Corp.,

Employer,

and

Case No.

Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46,

18-RC-10677

Petitioner.

Objection to Conduct Affecting the Results of the Election

FILED ON BEHALF OF THE EMPLOYER

By Wallace L. Chafe
Department of Linguistics
University of California
Berkeley, California 94720

At the request of:

Joseph P. Carey
Attorney of Record
555 White Plains Road
P.O. Box 7
Tarrytown, New York 10591

Objection (Supplemental)

The following constitutes a Supplemental Objection to the Objection to conduct affecting the results of the election filed

by Joseph P. Carey on July 26, 1978 on behalf of the Tama Meat Packing Corporation, Case No. 18-RC-10677.

I was contacted in this matter by Katherine Hammer, Assistant Professor of English of Washington State University. I am Professor of Linguistics at the University of California at Berkeley, where I have been on the faculty of the Department of Linguistics since 1962. I received the PhD in Linguistics from Yale University in 1958. One of my fields of specialization has been the semantics of the English language. I am the author of *Meaning and the Structure of Language,* (University of Chicago Press, 1970) and of various articles on related topics.

In my opinion the Objections raised by Professor Hammer are correct. First, the clause "because of the extra effort you have given in your struggle to win your NLRB election and negotiate your contract" could not be taken literally at the time the flyer in question was distributed, since the election had not been held at that time. As a result, these words could only be interpreted as a condition: "If you make this extra effort, the initiation fee will be waived." Second, by far the most likely interpretation of this clause is one in which the conjunction "and" creates a set of people who *both* vote for the Union *and* negotiate the Union contract, as Mr. Carey also notes on page 2 of his Objection.

In my opinion any other interpretation would be forced, and would not likely have been made by the readers of this flyer.

Respectfuily submitted,

Tama Meat Packing Corp.,
Employer

At the request of

Joseph P. Carey
Attorney of Record

By Wallace L. Chafe
Professor of Linguistics
Department of Linguistics
University of California
Berkeley, California 94720

Dated at Berkeley, California, this 14th day of August, 1978

VITA

Geoffrey I. Gamble
Department of Anthropology
Washington State University

Education

University of California, Berkeley, 1975; Ph.D. (Linguistics)

Dissertation: Wikchamni Grammar

California State University, Fresno, 1971; M.A. with Distinction (Linguistics)

Thesis: Wikchamni Syntax

Fresno State College, 1965; B.A. (English, minor Field Philosophy)

Professional experience

1976 to present Assistant Professor, Washington State University

1975 to present Main consultant on J. P. Harrington microfilm project, Smithsonian Institution

1975-1976 Smithsonian Postdoctoral Fellow, Washington, D.C.

1973-1975 Linguistic consultant to Head Start Program, Visalia, California

1972-1975 Teaching Assistant, Department of Linguistics, University of California, Berkeley

1971-1973 Research Associate, Survey of California Indian Languages, Berkeley, California

Awards and Honors

1978 National Endowment for the Arts—Klickitat Basketry and Oral Tradition

1977 Shell Foundation Grant-in-Aid

1975-1976 Smithsonian Postdoctoral Fellowship

1973-1975 Dean's Fellowship, University of California, Berkeley

1972-1975 University of California Grant-in-Aid for research

1971-1972 Newhouse Foundation Grant-in-Aid

1971 Phillips Fund, Grant-in-Aid for American Indian Studies American Philosophical Society

1971 Master of Arts with Distinction, Linguistics, California State University, Fresno

1965 Nomination to Phi Kappa Phi, National Collegiate Honor Society

Membership in professional organizations

American Anthropological Association

Linguistic Society of America

National Society of Classical Guitar

Southwest Anthropological Association

Society of Sigma Xi

Publications and papers

1973 "The Penutian Stock", ms

1974 Brief reviews of Introduction to the *Principles of Language* by Paul A. Gaeng and *Introductory Language Study* by Hulon Willis, in *Romance Philology,* Vol. 28, No. 1, pp. 141-2.

"Yokuts Dialects", read for the XII Conference on American Indian Languages, Mexico City.

1975 "Consonant Symbolism in Yokuts", in *IJAL,* Vol. 41, No. 4, October, pp. 306-9.

"Harrington and his work", read for the XIII Conference on American Indian Languages, San Francisco.

1976 "Aspirated Stops in Photo-Yokuts" read for the XIV Conference on American Indian Languages, Washington, D.C.

1977 "Nootkan Glottalized Resonants in Nitinat: A case of lexical diffusion", in The Lexicon in Phonological Change, ed. William S-Y Wang, Mouton.

In press "The 'Old-Time' Chunut Count" in *American Indian and Indo-European Studies*—papers in honor of Madison S. Beeler, eds. Klar, Langdon and Silver, in *Trends in Linguistics,* Mouton (To appear in mid 1978.)

Wikchamni Grammar, UCPL Vol. 79. (To appear in late 1978.)

"Borrowing in North America" in *Handbook of North American Indians,* Smithsonian Institution. (To appear in early 1979.)

"Language: historical and biological perspectives" in the proceedings of the Spring Hill Conference, ed. R. L. and S. Currier, (To appear in early 1979.)

Classes taught

Linguistics:

Introduction to Linguistics

Descriptive Linguistics

Seminars on:

Phonology

Syntax

Language and Cognition

Language and the Brain

Anthropology:

Introduction to Anthropology

Ethnography of Northwest Coast

APPENDIX C

United States of America
Before the National Labor Relations Board

Tama Meat Packing Corp., Employer, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO, Petitioner.	Case 18-RC-10677

DECISION AND CERTIFICATION OF REPRESENTATIVE

(Dated 11/15/78)

Pursuant to authority granted it under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered an objection to a second election held July 21, 1978[1] and the Regional Director's Report recommending disposition of same. The Board has reviewed the record in light of the exceptions and supporting brief, and hereby adopts the Regional Director's findings and recommendations.[2]

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[1] The second election was conducted pursuant to an Order and Direction of Election issued by the Board on September 30, 1976. The tally was: 94 for, and 59 against, the Petitioner; there were 25 challenged ballots, an insufficient number to affect the rules.

[2] The Employer's request for oral argument is hereby denied, as the Regional Director's Report and the Employer's exceptions and brief adequately reflect the positions of the parties. The Employer's exceptions in our opinion raise no material or substantial issues of fact or law which would warrant reversal of the Regional Director's recommendation that the Employer's objection be overruled, or require a hearing on the objection.

Certificate of Representative

It is hereby certified that a majority of the valid ballots have been cast for Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO and that, pursuant to Section 9(a) of the Act the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Tama, Iowa facility including plant clerical employees, meat graders, yard drivers and shag drivers; excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Dated, Washington D.C., November 15, 1978.

Howard Jenkins, Jr., Member

Betty Southard Murphy, Member

John C. Truesdale, Member

(Seal) NATIONAL LABOR RELATIONS BOARD

APPENDIX D

United States of America

Before the National Labor Relations Board

Tama Meat Packing Corp. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO.	Case 18-CA-6075

DECISION AND ORDER

(Filed May 14, 1979)

Upon a charge filed on November 29, 1978, by Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO, herein called the Union, and duly served on Tama Meat Packing Corp., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued a complaint on December 14, 1978, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on November 15, 1978, following a Board election in Case 18-RC-10677 the Union was duly certified as the exclusive collective-bargaining representative of

Respondent's employees in the unit found appropriate;[1] and that, commencing on or about November 22, 1978, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative and to furnish certain information, although the Union has requested and is requesting it to do so. On January 4, 1979, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 6, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 15, 1979, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent filed no response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

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[1] Official notice is taken of the record in the representation proceeding, Case 18—RC—10677, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 38 (1967), enfd, 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

In its answer to the complaint, Respondent admits its refusal to bargain but attacks the Union's certification on the basis that the Board erred in certifying the Union as the exclusive bargaining representative of Respondent's employees in the appropriate unit. In her Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues previously considered in the underlying representation case and that there are no factual issues warranting a hearing.

Our review of the record herein, including the record in Case 18-RC-10677, discloses, *inter alia,* that on September 30, 1976, the Board issued its Order and Direction of Second Election,[2] directing that an election be held in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Tama, Iowa facility, including plant clerical employees, meat graders, yard drivers and shag drivers; excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Thereafter, a second election was held on July 21, 1978. The tally of ballots showed 94 votes cast for the Union and 59 against. There were 25 challenged ballots, an insufficient number to affect the results. Respondent filed an objection to the election. On August 11, 1978, the Regional Director for Region 18 issued a report recommending that the Board over-

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[2] The first election was conducted pursuant to a Stipulation for Certification Upon Consent Election. That election was set aside by an Administrative Law Judge in a Decision issued in the consolidated proceding of Case 18—CA-4809 and 18—RC—10677. No exceptions were taken to the Decision of the Administrative Law Judge. Consequently, the Order and Direction of Second Election was issued by a Deputy Executive Secretary at the direction of the Board.

rule Respondent's objection and that a certification of representative be issued. On August 18, 1978, Respondent filed exceptions to the Regional Director's recommendations. On November 15, 1978, the Board issued its Decision and Certification of Representative adopting the findings and recommendations of the Regional Director and certifying the Union as the exclusive bargaining representative of the employees in the appropriate unit. On November 22, 1978, Respondent informed the Regional Director for Region 18 that it would technically refuse to bargain with the Union. Based on the foregoing, counsel for the General Counsel contends that the only issue in this case is whether the Board erred in certifying the Union as the exclusive bargaining representative of Respondent's employees. It thus appears that Respondent is attempting to raise herein issues which were raised in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Repondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice

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[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

proceeding. Accordingly, we grant the Motion for Summary Judgment.[4]

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent, an Iowa corporation, is engaged in the processing and wholesale distribution of meat and meat products. During the year ending December 31, 1978, a representative period, Respondent, in the course and conduct of its business opera-

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[4] In its answer to the complaint, Respondent, in addition to denying the commission of any unfair labor practices, denies that the unit described is an appropriate unit. However, the record in Case 18—RC—10677 discloses that Respondent agreed to this unit in entering into a Stipulation for Certification Upon Consent Election and that both Board elections were conducted in said unit. Inasmuch as the issue of what constitutes an appropriate unit was disposed of in the underlying representation proceeding, no litigable issue is raised by Respondent's denial. Respondent also denies that since on or about November 24, 1978, and continuing to date, the Union had been requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, or other conditions of employment. However, the record discloses that the Union by letters dated November 24 and 27, 1978, requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other conditions of employment. Respondent has submitted nothing to controvert these letters, or their contents.

Respondent denies additionally that it has failed and refused to furnish the Union with information necessary and relevant to the Union for purposes of collective bargaining. Respondent admits, however, that since November 24, 1978, and continuing to date, the Union has requested such information from Respondent. Respondent does not allege that it has provided the Union with the aforesaid requested information and, as Respondent has submitted nothing to controvert the complaint allegation, Respondent's denial is without any substance and raises no litigable issue.

tion, purchased and caused to be transported and delivered at its Tama, Iowa, facility goods and materials in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported and delivered to said facility in Iowa directly from points located outside the State of Iowa. During the same representative period, Respondent processed, sold, and distributed at its Tama, Iowa, facility products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from said facility in Iowa to points located outside the State of Iowa.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Respondent at its Tama, Iowa facility, including plant clerical employees, meat grinders, yard drivers and shag drivers; excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On July 21, 1978, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 18, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on November 15, 1978, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request to Bargain and Respondent's Refusal

Commencing on or about November 24, 1978, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit, and to supply it with certain information relevant for purposes of collective bargaining. Commencing on or about November 22, 1978, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, and to furnish the Union with the information requested by it.

Accordingly, we find that Respondent has, since November 22, 1978, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and to furnish it with information relevant for the purpose of collective bargaining, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices with the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Tama Meat Packing Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, ALF-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed by the Respondent at its Tama, Iowa, facility, including plant clerical employees, meat graders, yard drivers and shag drivers; excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining with the meaning of Section 9(b) of the Act.

4. Since November 15, 1978, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 22, 1978, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit and to furnish it information relevant for the purpose of collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Tama Meat Packing Corp., Tama, Iowa, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed by the Respondent at its Tama, Iowa facility including plant clerical employees, meat graders, yard drivers and shag drivers; excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Refusing to furnish the above-named labor organization with information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, provide the above-named labor organization with information relevant and necessary for the purpose of collective bargaining.

(c) Post at its Route No. 1, Tama, Iowa, facility copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. May 14, 1979

HOWARD JENKINS, JR., Member

BETTY SOUTHARD MURPHY, Member

JOHN C. TRUESDALE, Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-46, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to supply information requested by the Union which is relevant and necessary for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Tama, Iowa facility, including plant clerical employees, meat graders, yard drivers and shag drivers, excluding cattle buyers, salesmen, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, upon request, furnish the above-named Union information relevant for the purpose of collective bargaining.

Respectfully submitted,

TAMA MEAT PACKING CORP.
(Employer)

Date _____

By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 316, 110 South Fourth Street, Minneapolis, Minnesota 55401, Telephone 612-725-2604.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 79-1563 [No Opinion]

YAMA MEAT PACKING CORPORATION, September Term, 1979
Petitioner,

v. Filed June 9, 1980

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition to Review and Cross-Application to Enforce an Order of the National Labor Relations Board.

Before: WRIGHT, Chief Judge, WALD, Circuit Judge, and MARKEY,* Chief Judge of the United States Court of Customs and Patent Appeals

ORDER

This cause came on to be heard on the record from the National Labor Relations Board and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. See Local Rule 13(c).

This court is of the view that the order of the National Labor Relations Board is supported by substantial evidence, is not arbitrary or capricious, and is otherwise free of reversible legal error.

On consideration of the foregoing, it is ORDERED and ADJUDGED by this court that the petition for review of the Board's order is hereby denied, and the Board's cross-application for enforcement of its order is hereby granted.

Per Curiam

For the Court

George A. Fisher
Clerk

* Sitting by designation pursuant to 28 U.S.C. §293 (a)(1976)

No. 80-247

Supreme Court, U. S.
FILED
SEP 20 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

TAMA MEAT PACKING CORP., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

WILLIAM A. LUBBERS
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Acting Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

WILLIAM M. BERNSTEIN
Attorney
National Labor Relations Board
Washington, D.C. 20570

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 80-247

TAMA MEAT PACKING CORP., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

QUESTION PRESENTED

Whether the Board abused its discretion in determining, without holding an evidentiary hearing, that the Union's offer during an election campaign to waive initiation fees after a collective bargaining agreement is reached was not improper.

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OPINIONS BELOW

The order of the court of appeals (App. 1a-2a, *infra*) is not reported. The decision and order of the National Labor Relations Board (Pet. App. A-40 to A-52) are reported at 242 N.L.R.B. No. 43. The underlying representation decision (Pet. App. A-38 to A-39) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 1980. The petition for a writ of certiorari was filed on August 15, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Pursuant to a representation petition filed by Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-46 ("the Union"), the Board conducted a representation election among petitioner's production and maintenance employees, which the Union won by a vote of 94 to 59 (Pet. App. A-42).[1] Petitioner filed a timely objection to the election, alleging that the election results were invalid because the Union had made an "unlawful waiver of initiation fees" (*id.* at A-4, A-42). The objection was based solely upon the following portion of a Union flyer mailed to employees shortly before the election (*id.* at A-4 to A-5):

> Q. Will we have to pay the initiation fee after our new contract is negotiated and we accept it?
>
> A. No! Your local Union will waive the customary initiation fee for all the employees on the Employer's

[1] There were 25 challenged ballots. The challenges were not resolved because the number of disputed ballots was insufficient to affect the outcome of the election (Pet. App. A-42).

> payroll at the time your new contract is accepted by you. This is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your Union contract.

After an administrative investigation, the Board's Regional Director found no impropriety in the Union's waiver offer and therefore recommended that the objection be overruled (Pet. App. A-1 to A-6). The Board issued a Decision and Certification of Representative, rejecting petitioner's exceptions to the Regional Director's Report and ruling that no factual issues had been raised that required an evidentiary hearing (*id.* at A-38 to A-39).

Despite this certification of the Union, petitioner refused to bargain. The Board found that its refusal violated Section 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. 158(a)(5) and (1) (Pet. App. A-43, 48). Accordingly, the Board ordered petitioner to bargain with the Union (*id.* at A-49 to A-50). The court of appeals enforced the Board's order, finding it to be supported by "substantial evidence" and "not arbitrary or capricious" (App. 1a, *infra*).

ARGUMENT

Petitioner contends (Pet. 8-14) that the Union's offer to waive the initiation fee was improper under *NLRB* v. *Savair Mfg. Co.*, 414 U.S. 270 (1973). This contention is without merit. In *Savair*, this Court held that "permitting the union to offer to waive an initiation fee for those employees signing a recognition slip prior to the election * * * allows the union to buy endorsements and paint a false portrait of employee support during its election campaign." *Id.* at 277. The Court recognized, however, that a union has a "legitimate" interest in waiving its usual initiation fee that may properly be served by making such a waiver "available not only to those who have signed up

with the union before an election but also to those who join after the election." *Id.* at 274 n.4. The courts of appeals uniformly have held that unconditional offers to waive fees for employees currently in the workforce are not improper inducements under *Savair* and therefore do not interfere with employee free choice in representation elections. See, *e.g.*, *NLRB* v. *L.D. McFarland Co.*, 572 F. 2d 256 (9th Cir.), cert. denied, 439 U.S. 911 (1978); *NLRB* v. *Wabash Transformer Corp.*, 509 F. 2d 647, 649-650 (8th Cir.), cert. denied, 423 U.S. 827 (1975); *Altman Camera Co.* v. *NLRB*, 511 F. 2d 319, 322 (7th Cir. 1975); *NLRB* v. *S & S Product Engineering Services, Inc.*, 513 F. 2d 1311, 1312-1313 (6th Cir. 1975); *Thrift Drug* v. *NLRB*, 521 F. 2d 243, 244 (5th Cir. 1975), cert. denied, 425 U.S. 911 (1976); *NLRB* v. *Stone & Thomas*, 502 F. 2d 957, 958 (4th Cir. 1974); *NLRB* v. *Dunkirk Motor Inn, Inc.*, 524 F. 2d 663, 665 (2d Cir. 1975).

Petitioner does not dispute this legal principle. Rather, it contends that the Board, upheld by the court of appeals, incorrectly found the Union's waiver offer to be unconditional whereas, in fact, the flyer indicated that the fee would be waived only for employees who supported the Union prior to the election. This argument involves only the application of settled principles to the facts of this particular case and consequently does not warrant further review by this Court. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 490-491 (1951).

Moreover, the Board correctly found that the waiver offer clearly applied unconditionally to all employees and therefore was proper under the *Savair* standard. Petitioner concedes (Pet. 11) that the second sentence of the offer—"[y]our local Union will waive the customary initiation fee for all employees on the employer's payroll at the time your new contract is accepted by you"—is unobjectionable. Petitioner contends (Pet. 10-13),

however, that the third sentence—"[t]his is done because of the extra effort you have given in your struggle to win your NLRB election and negotiate your Union contract"—suggests that the offer was available only to those employees who supported the Union before the election despite the clarity of the prior sentence that the offer was uniformly available to all employees on the payroll at the time of the contract ratification. There is no merit to this contention. The third sentence merely gives the reason for the promise to waive initiation fees, which was something that had already taken place, i.e., the "extra effort [the employees] have given" in the struggle to win the election and secure a collective bargaining agreement with their employer. Unlike the initiation fee waiver struck down in *Savair, supra*, the Union's announcement did not require any action on the part of the employees in order to benefit from the Union's pledge to waive initiation fees, and there is no suggestion that an employee would be treated differently depending upon whether he committed himself to the Union before or after the election. The Board's decision to this effect, based on what petitioner's expert concedes (Pet. 13) to be the literal meaning of the flyer, plainly is based upon substantial evidence.[2]

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[2]Petitioner also suggests (Pet. 14) that it was improperly deprived of an evidentiary hearing on its objections. Section 102.69(d) of the Board's Rules and Regulations, 29 C.F.R. 102.69(d), provides for a hearing when an administrative investigation reveals that "substantial and material factual issues exist." It is well settled that this qualified right to a hearing satisfies all statutory and constitutional requirements. See, *e.g., NLRB* v. *Golden Age Beverage Co.*, 415 F. 2d 26, 32-33 (5th Cir. 1969). Here, the facts relating to the offer contained in the flyer were undisputed. The controversy concerned only the correctness of the Regional Director's inferences and conclusions based on those facts. Thus the Board was clearly warranted in overruling the objection without a hearing. See, *e.g., NLRB* v. *Griffith Oldsmobile, Inc.*, 455 F. 2d 867, 868-869 (8th Cir. 1972).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1980

DOJ-1980-09

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1563

September Term, 1979

Filed JUN 09 1980

TAMA MEAT PACKING CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition to Review and Cross-Application to Enforce an Order of the National Labor Relations Board.

Before: WRIGHT, Chief Judge, WALD, Circuit Judge, and MARKEY,* Chief Judge of the United States Court of Customs and Patent Appeals.

ORDER

This cause came on to be heard on the record from the National Labor Relations Board and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

This Court is of the view that the order of the National Labor Relations Board is supported by substantial evidence, is not arbitrary or capricious, and is otherwise free of reversible legal error.

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*Sitting by designation pursuant to 28 U.S.C. § 293(a) (1976).

On consideration of the foregoing, it is ORDERED and ADJUDGED by this court that the petition for review of the Board's order is hereby denied, and the Board's cross-application for enforcement of its order is hereby granted.

Per Curiam

For the Court

/s/ George A. Fisher

GEORGE A. FISHER
Clerk